

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

**CSX TRANSPORTATION, INC.,
individually and on behalf of NORFOLK
& PORTSMOUTH BELT LINE
RAILROAD COMPANY,**

Plaintiff,

v.

**NORFOLK SOUTHERN RAILWAY
COMPANY, NORFOLK &
PORTSMOUTH BELT LINE RAILROAD
COMPANY, JERRY HALL, THOMAS
HURLBUT, PHILIP MERILLI, and
CANNON MOSS,**

Defendants.

No. 2:18-cv-530

**DEFENDANT NORFOLK SOUTHERN RAILWAY COMPANY'S
MOTION TO DISMISS, FOR JUDGMENT ON THE PLEADINGS, AND FOR
REFERRAL OF ISSUES TO THE U.S. SURFACE TRANSPORTATION BOARD**

For the reasons set forth in the accompanying brief, Defendant Norfolk Southern Railway Company (“NSR”), by counsel, moves for dismissal and for judgment on the pleadings on Counts I-IV (antitrust claims), Count VIII (statutory business conspiracy), and Count IX (civil conspiracy) of the Complaint under Rule 12(b)(1) and/or Rule 12(c) of the Federal Rules of Civil Procedure. NSR also moves the Court to refer one or more issues to the U.S. Surface Transportation Board (“STB”) and to stay this case pending the STB’s determination of those issues.

WHEREFORE, NSR respectfully requests that this Court grant this Motion and enter an Order:

1. Dismissing with prejudice Counts I, II, III, IV, VIII, and IX of the Complaint because NSR is exempted from liability under 49 U.S.C. § 11321(a) and because only the STB can grant CSXT access to NIT under 49 U.S.C. § 11102(a); to the extent the Counts are not dismissed, refer to the STB for determination the

following dispositive issue: Whether the STB authorized NSR's control of NPBL in conjunction with the STB's approval of the Merger;

2. Dismissing with prejudice CSXT's request for relief under all Counts that the Court enter an order directing NPBL to approve CSXT's Service Proposal;
3. Referring to the STB for determination the following issue, which is essential to all Counts: Whether the \$210 line haul switching rate contained in NPBL's Switching Tariff 8100-J is unreasonable; and
4. Staying this case in its entirety pending the STB's determination of the issue(s) referred to it by this Court.

Date: January 31, 2020

Respectfully submitted,

NORFOLK SOUTHERN RAILWAY COMPANY

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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2020, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system, which sent a notification of such filing (NEF) to the registered participants as identified on the NEF to receive electronic service, including:

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